



Serial No.: 10/065,619
Confirmation No.: 4211
Applicant: PERSSON et al.
Atty. Ref.: 00173.0018.PCUS00

REMARKS:

The new claims have been added to directly recite, in independent claims, the exclusive utilization of a retarder to maintain the vehicle's speed in a downhill descent. It is respectfully pointed out that no new matter has been added, nor would the new claims necessitate a search having different scope than that necessitated by the originally presented claims; therefore, all pending claims are appropriate for consideration by Examiner at this time.

IN RESPONSE TO THE OFFICE ACTION:

REJECTION UNDER 35 U.S.C. § 102:

Claims 1-11 have been rejected under 35 U.S.C. §102(b) as being anticipated by Rath '679. In response, Applicant requests that the Examiner reconsider and withdraw the rejection in view of the following:

For there to be anticipation under 35 U.S.C. §102, "each and every element" of the claimed invention must be found either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and references cited therein. See also *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986) ("absence from the reference of any claimed element negates anticipation."); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As pointed out by the court, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *ATD Crop. V. Lydall, Inc.*, 159 F.3d 534, 545, 48 USPQ 2d 1321, 1328 (Fed. Cir. 1998). See also *In re Spada*, 911 F.2d 705, 708, 15 USPQ 2d 1655, 1657 (Fed. Cir. 1990).

Regarding the rejected independent claims, for purposes of the present argument, focus is drawn the following claim recitations:

(Claim 1) “*a vehicle comprising . . . **at least one additional brake function***” and “*a computing means for determining a value relating to the maximum allowable long-term velocity (V_{max}) of the vehicle in dependence on at least the value of current inclination (α) and **in consideration of the current braking ability of the at least one additional brake function***”; and

(Claim 7) “*providing a vehicle having a wheel brake system and **at least one additional brake function**; . . . determining the current braking capability of the at least one additional brake function*” and “*determining a value (V_{max}) relating to the maximum allowable long-term velocity of the vehicle in dependence of at least the value of said inclination (α) and **the current braking ability of said at least one additional brake function***.”

In order to place these claim recitations in context, it is important to consider the balance of Applicant's disclosure, but with care being taken to avoid reading further limitations into the claims beyond that which is expressly claimed. In that regard, Examiner's attention is directed at least to the following paragraphs of Applicant's disclosure wherein it is explained that the “additional brake function” is a braking system supplemental to the operating (hydraulic disc) brake function/system.

[0008] Normally, an articulated hauler is equipped with a diesel engine and an automatic transmission having, for example, six forward gear ratios and two reverse gear ratios. For braking of the vehicle, an operating brake system is used, preferably of the hydraulic type and divided into two circuits; one circuit intended for the engine unit and another circuit intended for the load-carrying unit. **The brake system includes conventional disc brakes arranged for braking the respective wheels. With respect to the transmission, there is normally an integrated retarder; that is, an hydraulic brake device that acts on a turbine shaft of the transmission for braking the vehicle.**

[0009] During braking of the hauler, the driver uses a brake pedal designed in such a way that when depressed, it initially causes activation of **a retarder**. When depressed further, the **mechanical or operating brakes** are also activated and caused to operate in cooperation with the retarder. The reason for first activating the retarder is to help control the high thermal loads affecting the operating brake during mechanical braking. Thus, by primarily using the retarder, or at least initially using the retarder, reduced wear of the operating brake system is achieved and an increased operator braking comfort is also realized.

[0010] Such haulers are also often suitably equipped with a separate retarder pedal that, when depressed, will **only cause braking by means of the retarder**.

[0011] Further, **the hauler normally includes an additional brake function in the form of a motor-brake that is a typically occurring braking function of diesel engines.** A motor-brake is controlled by means of a separate control and includes a throttle that, when actuated, will restrict the flow of exhaust gases from the engine during its exhaust phase. This creates a back pressure in the exhaust system that in turn causes a braking effect.

Still further, these limitations are expressly claimed, in dependent format, in claims 4 and 5 where it is alternatively recited that “the at least one additional brake system comprises a retarder arranged on the vehicle” (claim 4) and that “the at least one additional brake system comprises a motor-brake arranged in the vehicle” (claim 5).

This must be contrasted to the excerpts of the Rath ‘679 patent cited by Examiner and asserted as disclosing Applicant’s claimed features; those cited Rath ‘679 excerpts are:

(column 1, lines 40-50) The apparatus designed according to the invention to meet the object specified is characterized by the following measuring means: a sensor for the vehicle speed, a sensor for the roadway inclination, a sensor for the axle load, a sensor for the transverse vehicle acceleration, a sensor for the temperature of the brakes, a sensor for the state of wear of the brakes, a sensor for the state of a brake pressure source, and a sensor for the tire pressure[.]

(column 1, line 65 - column 2, line 3) In accordance with another modification of the method according to the invention a maximum rated vehicle speed is determined which is coordinated with the given state of the brakes and of the vehicle as well as the predetermined maximum stopping distance and is indicated to the driver in addition to the instantaneous actual velocity of the vehicle.

(column 5, lines 55-68) If the actual stopping distance X_{ist} determined exceeds the predetermined rated stopping distance X_{soll} the indicating or display means 40 issues an acoustical and/or optical alarm signal to warn the driver.

It is possible as well to calculate the vehicle velocity V which belongs to each actual stopping distance and at which the actual and the rated stopping distances would be the same. Both velocities can be indicated at the same time to the driver on the display means 40. For example, the “normal” instantaneous travelling speed of the vehicle measured by the tachometer may be shown by a white pointer, and the maximum permissible velocity based on the instantaneous, calculated actual stopping distance may be shown by a red pointer (if the display is digital or employs bars, corresponding colors may be chosen).

(column 6, lines 6-8) This may be done by moving the accelerator pedal forcibly in the sense of power reduction and/or by cutting in an engine brake.



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Clearly, Applicant's claimed invention is not found "either expressly, or inherently described in [the] single prior art reference," Rath '679 as required for anticipation under 35 U.S.C. § 102. It is also instructive to appreciate that the controlling concern/criteria/parameter that is disclosed/taught/suggested in Rath '679 is avoidance of travel conditions that would overrun a "maximum permissible stopping distance." {See at least column 1, lines 36, 55 & 60 and column 2, lines 1 & 8}

For the reasons outlined hereinabove, Applicant respectfully asserts that the presently pending claims are allowable, and a Notice to that effect is respectfully solicited.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 08-3038, referencing Order No. 00173.0018.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner should directly contact the undersigned by phone to further the discussion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tracy W. Drude'.

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